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No. 90-385

Supreme Court, U.S.

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1990

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JOSEPH HENNEBERRY,

*Petitioner,*

v.

RICHARD LEE SUTTON,

*Respondent.*

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On Petition For A Writ Of Certiorari  
To The Court Of Appeals Of Maryland

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REPLY BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI

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REPLY ARGUMENT

THIS CASE PRESENTS A LIVE  
AND CONTINUING CONTROVERSY

Respondent suggests this case is or "will likely be moot in the near future", Respondent's Brief at 5, because the State has revoked his parole and commenced proceedings to remove him from Patuxent Institution. There is no merit to this suggestion.

The State continues to challenge respondent's parole because that parole has not received the approval of the governor as required by Md. Ann. Code, Art.

31B, § 11(b)(2) (1976 Repl. Vol., 1982 Cum. Supp.). Therefore, the Board's decision of August 8, 1990, to parole respondent does not moot this case, *see Mabry v. Johnson*, 467 U.S. 504, 507 n.3 (1984); *Jago v. Van Curen*, 454 U.S. 14, 21 n.3 (1981); *Jones v. Cunningham*, 371 U.S. 236 (1963), and respondent does not claim to the contrary. *See* Respondent's Brief at 6 ("the case would not have been moot had Sutton remained on parole").

Nor has this case been mooted by the Board's revocation of respondent's parole because respondent is challenging that revocation. *See* Respondent's Brief at 4. If that challenge is successful, respondent will be paroled, in accordance with the decision below, without the governor's approval. Thus, "these same parties are reasonably likely to find themselves again in dispute over the issues raised in th[e] petition. . . ." *Burlington Northern Railroad Company v. Brotherhood of Maintenance of Way Employees*, 481 U.S. 429, \_\_\_ n.4, 107 S.Ct. 1841, 1846 n.4 (1987). *See also Honig v. Doe*, 484 U.S. 305, \_\_\_ n.6, 108 S.Ct. 592, 601 n.6 (1988). This case thus involves facts quite unlike those present in *Murphy v. Hunt*, 455 U.S. 478, 482 (1982), where the party "no longer had a legally cognizable interest in the result in this case." Similarly, the mere fact that respondent may be transferred to another institution at some unspecified time in the future does not moot this case. *Compare with Weinstein v. Bradford*, 423 U.S. 147, 148 (1975) (case moot where "respondent can have no interest whatever in the procedures followed by petitioners in granting parole").

Finally, even if this case were moot, which it is not, the proper disposition of this petition would be

to grant certiorari, vacate the judgment below, and remand the case with directions that the case be dismissed as moot, *see United States v. Munsingwear*, 340 U.S. 36, 39 (1950), and not, as respondent urges, to deny the petition.

### CONCLUSION

For the reasons stated in the State's petition, this Court should issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland. Following review, that judgment should be reversed.

Respectfully submitted,

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